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September 14, 1998

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Comments of Intermedia Communications Inc. in CC Docket No. 98-146

Dear Ms. Salas:

Please find enclosed an original, four copies, and a diskette containing Intermedia Communications Inc.'s Comments in the above-referenced proceeding. If you have any questions or need additional information, do not hesitate to phone me at (202) 955-9881.

Sincerely,

Michael B. Hazzard

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)))))))	CC Docket 98-146

Comments of
Intermedia Communications Inc.

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September 14, 1998

SUMMARY

In these comments, Intermedia Communications Inc. ("Intermedia") seeks to support the Commission's continuing effort to promulgate technology-neutral rules to implement the Telecommunications Act of 1996.

Regarding defining the technical terms included in section 706 (*e.g.*, "broadband"), Intermedia suggests that the Commission should adopt broad, technology-neutral definitions. Through adopting broad, technology-neutral definitions, the Commission will minimize the regulatory gamesmanship that inevitably results when a service can benefit from a specific regulatory classification. Similarly, the Commission should promulgate no rule that benefits a specific network architecture; rather, the Commission's rules should leave the choice of network architecture to market forces.

Intermedia submits that competitive market forces are responding to the nation's need for backbone facilities and advanced telecommunications capability. Recent Commission statistics demonstrate that the nation's backbone facilities are increasing dramatically each year and that new technology is similarly increasing the capacity of existing backbone facilities. Given these strong market responses, the Commission should be wary of any incumbent local exchange carrier ("ILEC") claim of interLATA "bandwidth famines" in any area, including rural areas.

Competitive local exchange carriers are deploying advanced telecommunications services as rapidly as possible. Intermedia, for one, is aggressively deploying advanced services and facilities throughout the nation. The greatest impediments to CLEC efforts to deploy facilities are the terms and conditions of collocation, the limited availability of transport options,

and the excessive cost of accessing unbundled network elements, all of which are under ILEC control.

Finally, as technology and market segments continue to converge, the Commission should vigilantly guard against the effort of any service provider to exercise market power. In so doing, the Commission should continue to place heavy pressure on ILECs, especially the Bell Operating Companies, to open their networks in accordance with the procompetitive provisions of the Act.

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Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)))))))	CC Docket 98-146

Comments of
Intermedia Communications Inc.

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel, respectfully submits its comments in response to the *Notice of Inquiry* in the above-captioned docket.[1]

I. Introduction

In these comments, Intermedia seeks to support the Commission's continuing effort to promulgate technology-neutral rules to implement the Telecommunications Act of 1996.[2] Intermedia strongly supports the Commission's view that its role "is not to pick winners or losers or select the 'best' technology to meet consumer demand, but rather to ensure that the

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1 *Notice of Inquiry*, CC Docket No. 98-146 (rel. Aug. 7, 1998) ("*NOI*").

2 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C §§ 151 *et seq.* ("Act"). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as codified in the United States Code. The 1996 Act amended the Communications Act of 1934.

marketplace is conducive to investment, innovation, and meeting the needs of consumers."[3] Toward this end, Intermedia respectfully suggests that the Commission should utilize section 706 to require full implementation of incumbent local exchange carrier ("ILEC") interconnection, unbundling, resale, and collocation obligations for digital and broadband networks. Any effort to permit ILECs to insulate advanced services from the procompetitive provisions of the Act will slow rather than speed the deployment of advanced telecommunications capability.

Intermedia strongly supports the Commission's recent section 706 Order,[4] and Intermedia is preparing extensive comments in response to the companion section 706 *Notice of Proposed Rulemaking*. In these comments, Intermedia addresses the following points:

- The Commission should adopt broad, technology-neutral definitions under section 706;
- Competitive markets are responding to the nation's need for backbone facilities and advanced telecommunications capability;
- Competitive local exchange carriers ("CLECs") are deploying advanced telecommunications services as rapidly as possible; and
- The Commission should vigilantly guard against efforts to exercise market power as industry consolidation continues.

II. The Commission should adopt broad, technology-neutral definitions under section 706

In keeping with the technology-neutral underpinnings of the Act, Intermedia suggests that the Commission should adopt broad, technology-neutral definitions in

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3 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking at ¶ 2 (rel. Aug. 7, 1998).

4 *Id.*

implementing section 706. The deployment of advanced telecommunications capability is not a discrete phenomenon, but is part of the national telecommunications infrastructure's evolution into a series of interconnected, digital, packet-switched networks. Any effort to pigeon-hole advanced telecommunications services into discrete boxes will serve only to distort market responses to technological developments.

A. The Commission should adopt a broad, technology-neutral definition of "broadband" to encompass any technology that can transmit more than a single voice-grade communication

In the *NOI*, the Commission notes that the Act does not define the term "broadband."[5] Broadband has been defined as a "transmission facility that has a bandwidth (capacity) greater than a voice grade line of 3khz."[6] Others have defined broadband as a "transmission scheme where multiple transmissions share a common communications path."[7] Intermedia suggests that the Commission should adopt a definition of broadband that encompasses any facility that can be used to provision greater than single voice-grade service, regardless of technology.

The definition suggested would include high-bandwidth services that use a single channel as well as services that use multiple channels. This is critical because a single facility may be used in different ways by different carriers. For example, some loops that currently are used to provide 56kbps voice-grade service may be used to provision digital subscriber line

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5 *NOI* at ¶ 14.

6 Harry Newton, *Newton's Telecom Dictionary* 90 (11th Edition 1996).

7 Annabel Z. Dodd, *The Essential Guide to Telecommunications* 234 (1998).

("DSL") high-bandwidth services. In provisioning DSL, some companies might choose to offer both voice and Internet service over a single DSL loop making the service multichannel, whereas another company might offer a single, high-speed Internet channel over the same loop. The mix of services provisioned over facilities with similar capacities should not result in different treatment by the Commission. Any Commission definition that would create such an outcome risks encouraging regulatory gamesmanship, which would tend to slow rather than speed the deployment of advanced services. The Commission can avoid these issues by endorsing an inclusive definition of broadband.

The Commission's recognition that the definition of "advanced telecommunications capability" will change over time[8] supports the view that broad, technology-neutral definitions are most appropriate when looking to future developments in telecommunications. To the extent that the Commission focuses its attention on services and facilities that are capable of transmitting high-bandwidth data, voice, and video services, and combinations thereof, the Commission's definitions will preserve the flexibility needed to accommodate change in technology.

B. The plain language of the Act suggests that the Commission may not exclude one-way telecommunications from the definition of advanced telecommunications services

The Commission should not exclude "one-way" communications from the definition of advanced services,[9] as doing so would contravene the plain language of the Act. Intermedia believes that section 706's definition of advanced telecommunications as "capability

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8 *NOI* at ¶ 15.

9 *NOI* at ¶ 16.

that enables users to originate and receive ... telecommunications"[10] does not exclude one-way communications. Reading section 706's definition to require all advanced service providers to provide both originating and terminating transmissions in every service would exclude a large segment of transmission media – including satellite, CATV, and some CMRS systems – from ever benefiting from Commission rules and policies designed to promote advanced telecommunications capabilities. Not only is this definition unreasonably restrictive, it is inconsistent with the plain language of section 706, which defines "advanced telecommunications capability" expressly "without regard to any transmission media or technology."

Moreover, many that are currently "one-way" either can be used or will in the future have the capability to support two-way communications. For example, cable television most commonly is used to transmit a one-way communication from the cable service provider to subscribers; however two-way capability is rapidly developing. As a recent Commission working paper notes, "[t]he cable industry is in the midst of a transformation from self-contained, coaxial distribution systems that feature one-way delivery of analog television signals to two-way interactive broadband systems involving a hybrid of traditional coaxial and modern fiber optic technologies."[11]

At bottom, any restrictive definition of advanced telecommunications capability risks excluding new technologies – or new uses of old technologies – and would thus cut against section 706's mandate that the Commission "encourage" the deployment of advanced

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[10] Pub. L. 104-104, Title VII, § 706, Feb. 8, 1998, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

[11] Barbara Esbin, "*Internet Over Cable: Defining the Future in Terms of the Past*," OPP Working Paper Series No. 30, Federal Communications Commission, Office of Plans and Policy, at 76 (Sept. 1998).

telecommunications. With this in mind, the Commission should endorse broad, technology-neutral definitions under section 706 in support of Congress' directive to encourage the deployment of advanced telecommunications capability over "any technology," and should not exclude one-way communications from the definition of advanced telecommunications capability.

C. Commission rules should leave the choice of network architecture to market forces

Regarding choice of network architecture for xDSL services, Intermedia is concerned that the *NOI* seems to express a preference for ADSL services.[12] Intermedia takes strong exception to any policy that would focus on ADSL to the exclusion of any other xDSL architecture. Indeed, today, HDSL is far more widely deployed, and it is currently used by ILECs and competitive carriers to provision DS1 services. Intermedia agrees with the Commission when it expresses a desire to leave the choice of network architecture to market forces,[13] and Intermedia strongly supports the view that the Commission should avoid promulgating any rule that is not technology neutral.

III. Competitive markets are responding to the nation's need for backbone facilities and advanced telecommunications capability

In the *NOI*, the Commission seeks comment on the availability of high-speed backbone capacity serving both intraLATA and interLATA routes.[14] Commission statistics

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12 *NOI* at ¶ 75.

13 *Id.*

14 *NOI* at ¶¶ 25, 33.

indicate clearly that competitive markets are deploying massive amounts of fiber facilities, and record evidence suggests that ILEC claims of "bandwidth famine" are seriously overstated – even in rural areas in the nation.

A. Recent FCC statistics demonstrate that the nation's backbone facilities are increasing dramatically each year

The Commission's most recent *Fiber Deployment Update – End of Year 1997* demonstrates that competitive markets are stimulating the rapid deployment of new fiber optic backbone facilities as well as the introduction of new technology to increase the capacity of existing fiber optic cable.[15] As reported by the Commission, IXC fiber optic network deployment increased 16% during 1997, and ILEC deployment increased by about 14%.[16] The overall growth rate for competitive access providers, many of whom are CLECs, "has typically exceeded 50% annually over the past several years."[17] Thus, fiber optic backbone facilities without question are being deployed rapidly throughout the nation by various industry segments.

Additionally, carriers are deploying new technology that dramatically increases the capacity of existing fiber. As the Commission notes, "a carrier employing 1.76 gigabit terminal technology using a single optical wavelength would find that this technology supports up to 25,000 circuits on a single fiber pair, more than triple the capacity of earlier systems."[18] As demand increases, providers can update the electronics used to increase the capacity of existing

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15 Jonathan Kraushaar, *Fiber Deployment Update – End of Year 1997* (rel. Sept. 1998).

16 *Id.* at 2.

17 *Id.*

18 *Id.*

facilities. Technology is stepping up to meet market needs by reducing "the cost of long haul fiber systems while allowing for lower cost upgrading of capacities as demand dictates."[19]

B. The Commission should be wary of ILEC claims of interLATA "bandwidth famines" in rural areas

In the *NOI*, the Commission seeks comment on the extent to which the demand for advanced services will vary geographically, including demand in rural areas.[20] Intermedia believes that consumer demand will likely vary by geographic region, and also strongly believes that competitive markets will meet the demands of consumers, even in rural areas. As a case in point, Intermedia suggests that the Commission look at the recent Bell Atlantic-West Virginia ("BA-WV") self-styled "emergency petition" to "end West Virginia's bandwidth crisis."[21] The record of this proceeding demonstrates that (1) the Commission should be suspicious of claims that ILECs need emergency interLATA relief and (2) the Commission has good reason to believe that market forces have responded and will continue to respond to the bandwidth needs of consumers in all areas of the country.

In its petition, BA-WV alleged that it was unable to purchase from any IXC interLATA DS3 service needed to satisfy a contract that BA-WV won in a competitive bidding process with the state of West Virginia. BA-WV further argued that, because it could not obtain such facilities from a competitive carrier, it could satisfy the contract with West Virginia only if the Commission were to grant BA-WV a limited interLATA waiver to provide the needed DS3

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19 *Id.* at 3.

20 *NOI* at ¶¶ 60, 61.

21 *Emergency Petition of Bell Atlantic-West Virginia for Authorization to End West Virginia's Bandwidth Crisis*, CC Docket No. 98-11, NSD-L-98-99, (filed Jul. 22, 1998) ("BA-WV Petition").

service.[22] The record of the proceeding demonstrated, however, that at least one large IXC did have the needed facilities available, but that neither BA-WV nor its interexchange partner had contacted the IXC to request such service.[23] Worse still, when the large IXC affirmatively contacted BA-WV to let it know that facilities were available, BA-WV indicated that it already had the needed DS3 circuit up and running.[24] Clearly, the Commission should carefully review ILEC allegations of "bandwidth famine."

On the positive side, comments filed during the proceeding demonstrated clearly that competitive carriers are deploying advanced telecommunications capability throughout West Virginia. The record in that proceeding demonstrated that a cable television company has begun providing telecommunications services over an OC12 fiber network, which can be upgraded to OC48 as demand requires.[25] Similarly a subsidiary of a utility is deploying an OC48 backbone network that will connect numerous cities in West Virginia with one another and with Pittsburgh, Pennsylvania.[26] Thus, not only are the presently needed facilities available, but competitors from other industries (cable and energy) are entering telecommunications markets – in rural areas, no less – just as Congress envisioned when it crafted the 1996 Amendments to the Communications Act.

At bottom, the challenge for the Commission is to determine whether an actual, acute shortage exists in a given geographic area or whether any perceived bandwidth shortfall is

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22 *Id.* at 3.

23 *Ex Parte* letter from Frank S. Simone to Magalie Roman Salas, CC Docket No. 98-11 at 2 (filed Aug. 31, 1998).

24 *Id.* at 3.

25 Comments of Helicon Corporation, CC Docket No. 98-11 at 5 (filed Aug. 10, 1998).

26 Comments of Allegheny Communications Connect, Inc., CC Docket No. 98-11 at 2 (filed Aug. 10, 1998).

merely an "occasional, transient lack of supply."[27] Intermedia suggests that the Commission should endorse a very strong, but potentially rebuttable, presumption that competitive forces will work to meet demand. As evidenced by the West Virginia case, markets work in rural areas too, and the Commission should be very, very skeptical of claims by monopolists that an expansion of their monopoly power is needed to satisfy the demands of consumers.

C. Advanced services should not be considered for universal service subsidization at this time

In the *NOI*, the Commission seeks comment on the point at which an advanced service should qualify for inclusion in universal service subsidy pools and on whether schools and libraries will receive adequate access to advanced services under existing regulation.[28] While universal service is "an evolving level of telecommunications services,"[29] Intermedia notes that a service may qualify for federal universal service support mechanisms only after the service has been "subscribed to by a substantial majority of residential customers."[30] At the same time, however, Congress has endorsed support mechanisms for providing advanced services to schools, rural health care facilities, and libraries.[31] Intermedia supports existing efforts and suggests that competitive markets in concert with existing universal service programs should be given a chance to work before any additional Commission action is taken.

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27 *NOI* at ¶ 33.

28 *NOI* at ¶¶ 64, 73.

29 47 U.S.C. § 254(c)(1)(B).

30 *Id.*

31 47 U.S.C. § 254(b)(6).

IV. CLECs are leading the country in the deployment of advanced services and facilities

Intermedia submits that CLECs are leading the nation in deploying advanced telecommunications services and facilities. In the *NOI*, the Commission suggests several "possible reasons for slow deployment" of advanced telecommunications capability, including "lack of capital" and "barriers created by law."[32] The capital markets are financing CLEC efforts to deploy advanced services. Intermedia alone has raised $2.5 billion in the last 18 months, and the trade journals are rife with reports of other CLECs raising impressive volumes of capital. While Intermedia strongly believes that the Commission should use market-based solutions to the extent practicable, Intermedia notes that in its experience, the ILECs' collective failure to respond to the procompetitive mandates of the Act is the single largest barrier to the deployment of advanced telecommunications capability.

A. Intermedia is aggressively deploying advanced services and facilities

Intermedia is the largest independent facilities-based CLEC in the nation, providing a full range of telecommunications services nationwide. In addition to providing local and long distance voice services, Intermedia provides a variety of advanced telecommunications services over its network, which to date is composed of over 150 data switches and 20 voice switches. Today, Intermedia focuses on business and institutional users. However, as this Commission and state regulators adopt procompetitive policies that reduce the cost of collocation and interoffice transport, the costs of providing residential service will decline and competitive

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32 *NOI* at ¶¶ 66-68.

entry into residential markets will increase. Intermedia will comment on these issues directly in the Commission's companion section 706 *Notice of Proposed Rulemaking*.

Intermedia maintains one of the most sophisticated digital networks in the country. Intermedia's data switches and high-capacity transport provide numerous advanced services such as asynchronous transfer mode ("ATM"), frame relay, integrated services digital network ("ISDN"), and Internet access. In 1994, Intermedia founded the UniSPAN© consortium with three other carriers, through which Intermedia provides end-to-end frame relay service throughout the United States and Canada. Intermedia also currently provides frame relay service to five Central and South American countries through frame relay operating agreements with several South American carriers, and Intermedia plans to expand this area of its service considerably over the coming year.

In July 1997, Intermedia acquired DIGEX, one of the country's largest Internet service providers ("ISPs"). DIGEX is a first-tier, national Internet carrier that operates high-capacity digital networks across the country. The acquisition of DIGEX both complemented and expanded Intermedia's national digital network. As a result of these developments, Intermedia operates one of the largest digital networks in the country.

As a carrier that is heavily focused on packet-based networks to provide both data and voice services, Intermedia is critically concerned that the Commission continue to perform as it has been charged by the Congress, and ensure that carriers are complying with the interconnection, collocation, unbundling, and pricing requirements mandated in the Act. To do so, the Commission must remain engaged in the active oversight of the ILECs' circuit-switched and packet-switched facilities and services.

B. ILEC practices are unreasonably hampering the ability of CLECs to deploy advanced services to consumers

The primary barrier faced by CLECs is the ILECs' continued and repeated failure to provide nondiscriminatory access to their networks at cost-based rates (which include a reasonable profit), in direct violation of the Act. The Commission can best promote the deployment of advanced services by taking decisive action to ensure that the procompetitive provisions of sections 251 and 252 of the Act are implemented fully.

In Intermedia's experience, the expense and delay in collocation, unavailability of transport options, and inability to enforce deployment intervals are the largest roadblocks to rapid deployment of advanced services. Additionally, access to inside wire is becoming an increasingly important issue for facilities-based CLECs.[33] ILECs are refusing to provide ongoing support of inside wire, which is serving to hamper further CLEC efforts to deploy advanced services. Intermedia notes that it will address each of these concerns in its comments on the Commission's section 706 *Notice of Proposed Rulemaking*.

V. The Commission should define "advanced services providers" broadly

Looking to the future, the Commission seeks comment regarding what type of regulation might be best as technology continues to merge and advanced services become more prevalent.[34] As for specific recommendations, the Commission should find that IXCs are advanced services providers to the extent that they provide high-bandwidth backbone and other facilities and functionalities. Indeed, to the extent that the Commission adopts rules to promote

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33 *NOI* at ¶ 53.

34 *NOI* at ¶¶ 77-82.

the deployment of advanced telecommunications capabilities, its policies should extend to any telecommunications carrier – whether CLEC, ILEC, or IXC.

VI. As industry consolidation continues, the Commission should vigilantly guard against efforts to exercise market power

Finally, the Commission should continue to place heavy pressure on ILECs, especially the Bell Operating Companies ("BOCs"), to open their networks in accordance with the procompetitive provisions of the Act. In Intermedia's experience, BOCs have embraced competition less than any other segment of the industry. BOCs have launched no meaningful effort to compete in local or long distance markets outside of their in-region territory. Indeed, in New York City, the area once thought most likely to generate inter-BOC competition, the two BOCs chose to merge, which resulted in avoiding, rather than embracing, large scale competition. The Commission should be wary of future megamergers, and learn from its Bell Atlantic-NYNEX experience that such mergers are much more likely to thwart competition than to produce any measurable benefit for consumers.

VII. Conclusion

Intermedia thanks the Commission for this opportunity to present its views on the state of deployment of advanced telecommunications capability. Intermedia urges the

Commission to adopt rules and policies to implement the procompetitive provisions of the Act, including section 706, in accordance with the discussion herein.

Respectfully submitted,

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